



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5125

by Rep. Edward J. Acevedo

SYNOPSIS AS INTRODUCED:

New Act

Creates the Immigrant Family Preservation Act. Provides that the Department of Children and Family Services shall determine, at the time a decision to take protective custody of a minor is made, whether the minor has any Mexican lineage; provides that the Department shall inform any Mexican minor, and any parent or custodian of a Mexican or Mexican-American minor, of the rights afforded under certain international agreements. Requires the Department to notify the Consulate General of Mexico in Chicago of certain information in connection with Mexican minors. Provides for interviews with Mexican or Mexican-American minors by a Consular representative. Requires the Department to work with the Consulate to obtain necessary documentation in the case of minors eligible for Special Immigrant Juvenile Status. Contains other provisions relating to Mexican and Mexican-American minors who have contact with the Department of Children and Family Services.

LRB095 16510 DRJ 46069 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Immigrant Family Preservation Act.

6 Section 5. Purpose. The purpose of this Act is to protect
7 the Mexican minor as a fundamental human element of Mexican
8 communities throughout the United States, in particular the
9 State of Illinois. The General Assembly recognizes that the
10 Mexican minor is essential to the maintenance of Mexican
11 culture, traditions, and values. Therefore, this Act provides a
12 method of early identification of Mexican minors and their
13 families in order to provide services that ensure all the
14 protections afforded by the Vienna Convention, the Bilateral
15 Convention, and all other applicable treaties and laws.

16 The General Assembly recognizes that the government of
17 Mexico has a duty to care for the interests of its nationals
18 abroad, particularly those of minors, as expressed in Article
19 5, Secs. (a) and (h), of the Vienna Convention. The General
20 Assembly also recognizes that it is imperative that the
21 Consulate be notified, without delay, of guardianship as
22 expressed by the Vienna Convention, Article 37(b). The General
23 Assembly further recognizes that the Consulate has a right to

1 information and access in all cases involving children of
2 Mexican nationals as expressed in Article VI of the Bilateral
3 Convention.

4 The further purpose of this Act is to ensure compliance
5 with the Bilateral Convention and the Vienna Convention. Both
6 the Bilateral Convention and the Vienna Convention provide for
7 consular notification and access in cases in which foreign
8 nationals are involved in legal proceedings. These treaties
9 place a special responsibility on the receiving state's
10 authorities, in this case, the Director of the Department, to
11 treat cases of foreign national minors with particular care.
12 The General Assembly recognizes that the notification of
13 consular authorities is essential in these cases, not only
14 because a legally binding treaty dictates it, but also because
15 the Consulate provides essential services that can mutually
16 assist both the Department and the Consulate, as well as the
17 individuals personally affected.

18 Section 10. Definitions. In this Act:

19 "Bilateral Convention" means the Consular Convention
20 Between the United States of America and the United Mexican
21 States, 57 Stat. 800, Treaty Series 985.

22 "Consulate" means the Consulate General of Mexico in
23 Chicago.

24 "Department" means the Department of Children and Family
25 Services.

1 "DIF" means the Agency for Integral Family Development,
2 which is the agency in Mexico charged with ensuring the welfare
3 of minors.

4 "Mexican" means any person who is a national of Mexico,
5 regardless of immigration status in the United States. For
6 consular notification purposes, a minor reported to be born in
7 Mexico will be assumed to be a Mexican national.

8 "Mexican-American minor" means any unmarried person who is
9 under the age of 18 years, was born in the United States, and
10 is eligible for Mexican nationality as the biological minor of
11 a Mexican national.

12 "Mexican custodian" means the non-parental caretaker of a
13 Mexican minor, who has been entrusted by the minor's parent or
14 parents with the day-to-day care of the minor.

15 "Mexican national minor" means any unmarried person who is
16 under the age of 18 years and was born in Mexico.

17 "Vienna Convention" means the Vienna Convention on
18 Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820.

19 Section 15. Determination of Mexican lineage. The
20 Department shall determine, at the time a decision to take
21 protective custody of a minor is made, whether the minor has
22 any Mexican lineage. The Department shall inform any Mexican
23 minor, and any parent or custodian of a Mexican or
24 Mexican-American minor, of the rights afforded under the Vienna
25 and Bilateral Conventions. If the Department learns at a later

1 time that the minor has any Mexican lineage, then the
2 information shall be forwarded to the appropriate parties as
3 determined under this Act.

4 Section 20. Notification to Mexican Consulate.

5 (a) The Department shall notify the Consulate in writing of
6 the following information:

7 (1) When the Department identifies a Mexican minor in
8 its custody.

9 (2) When a parent or custodian of a Mexican or
10 Mexican-American minor has requested that the Consulate be
11 notified.

12 (3) When the Department learns that a non-custodial
13 parent or parents reside in Mexico.

14 The written notification shall be made within 10 working
15 days after the decision to take protective custody of a Mexican
16 minor. If the Department learns, at a later time, that the
17 minor is a Mexican minor, then the information shall be
18 forwarded without delay to the appropriate parties, as
19 determined under this Act.

20 (b) For purposes of initial notification, the Department
21 shall provide the Consulate with the following information, if
22 available:

23 (1) The name of the Mexican or Mexican-American minor.

24 (2) The date of birth of the Mexican or
25 Mexican-American minor.

1 (3) The name of the minor's parent or custodian.

2 (4) The name and phone number of the Department
3 caseworker directly responsible for the case.

4 Section 25. Confidentiality; further information.

5 (a) Disclosure of information under this Act is subject to
6 the same requirements of confidentiality as the disclosure of
7 information under the Juvenile Court Act of 1987 and the Abused
8 and Neglected Child Reporting Act.

9 (b) In order to respond to the Consulate's need for
10 specific information regarding the cases of Mexican minors, the
11 Department shall designate Department personnel who are
12 responsible for responding to the Consulate's requests for such
13 information.

14 Section 30. Interview of minor by consular representative.
15 A representative of the Consulate may interview a Mexican minor
16 in the custody of the Department. In the case of a
17 Mexican-American minor, the Department's Guardianship
18 Administrator or his or her designee must consent to the
19 interview. In order to arrange for an interview of a Mexican or
20 Mexican-American minor, the Consulate shall contact the
21 Department's Division of Guardian and Advocacy or the
22 Division's designee.

23 Section 35. Special Immigrant Juvenile Status. In cases in

1 which a Mexican minor has been placed as a ward of the State of
2 Illinois and has become eligible for Special Immigrant Juvenile
3 Status (SIJS) pursuant to 8 U.S.C. 101(a)(27)(J)(ii), the
4 Department shall seek the Consulate's assistance in obtaining
5 the necessary documentation from Mexico for completion of the
6 SIJS application.

7 Section 40. Proof of Mexican nationality. In cases in which
8 a Mexican-American minor has been made a ward of the State of
9 Illinois, the Department's Division of Guardian and Advocacy
10 shall ensure that the minor has obtained his or her Mexican
11 birth certificate. The Department shall seek the Consulate's
12 assistance in the registration process and in obtaining the
13 necessary documentation from Mexico for completion of the
14 application for a birth certificate.

15 Section 45. Assistance by Agency for Integral Family
16 Development.

17 (a) If, after receiving notification that the Department
18 has custody of a Mexican minor or Mexican-American minor, the
19 Consulate contacts DIF in order to obtain the appropriate home
20 studies of potential families in Mexico who may become involved
21 in cases of minors in the custody of the Department, the
22 Department shall seek to obtain from the Consulate any
23 information received from DIF. The Department shall ensure that
24 any such information is delivered to the Department caseworker

1 directly responsible for the case.

2 (b) When a minor is placed in Mexico, if the Consulate
3 takes steps to obtain DIF's cooperation to ensure the minor's
4 welfare and provide whatever services are necessary and obtains
5 copies of the monitoring reports prepared by DIF concerning the
6 minor's welfare, the Department shall seek to obtain that
7 information and shall ensure that any such information is
8 delivered to the Department caseworker directly responsible
9 for the case. The Department shall cooperate with the Consulate
10 and DIF, with a view to providing necessary services to parents
11 or potential caretakers in Mexico, in anticipation of the
12 possible placement of a minor.

13 Section 50. Witnesses. The Department shall cooperate with
14 the Consulate to locate individuals who reside in Mexico and
15 must appear in an Illinois court in connection with cases
16 involving minors, in order to properly notify such individuals
17 of court appearances.

18 Section 55. Ongoing communication. Department staff shall
19 meet with officers of the Consulate at least 3 times a year in
20 order to discuss, clarify, and coordinate activities in areas
21 of mutual interest and concern. The Director of the Department
22 and the Consul General shall meet at least once a year in order
23 to assess the progress and direction of the implementation of
24 this Act. The Department shall participate with the Consulate

1 in joint prevention efforts regarding the protection and
2 well-being of Mexican families and minors. In addition, the
3 Department's Division of Communications shall make every
4 effort to exchange with the Consulate ideas and concerns of a
5 high profile nature that may result in media attention, in a
6 timely manner. The Consulate may contact the Department's
7 Division of Guardian and Advocacy, Advocacy Office for Children
8 and Families, or Office of Inspector General at any time,
9 however, notwithstanding any other provision of this Act.

10 Section 60. Immunity. Except as otherwise expressly
11 provided in this Act, nothing in this Act shall be construed as
12 a waiver of immunities to which the Consulate and its consular
13 agents are entitled to under international law, the Foreign
14 Sovereign Immunities Act, and international treaties in force
15 between Mexico and the United States. Except as otherwise
16 expressly provided in this Act, this Act shall not imply or
17 confer a submission by Mexico or its consular agents to the
18 jurisdiction of any United States or Illinois courts.

19 Section 65. Rules. The Department shall adopt rules as
20 necessary to implement this Act.